

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEPHEN HARRISON COCKBURN)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 10-1407
)	
NATIONAL BOARD OF)	
MEDICAL EXAMINERS)	
)	
Defendant)	

PLAINTIFF'S PRETRIAL MEMORANDUM

Pursuant to Local R. 16.1(c) and the Amended Scheduling Order, the Plaintiff Stephen Cockburn hereby presents the following information.

(1) NATURE OF THE ACTION AND THE BASIS OF JURISDICTION

This is an action pursuant to 42 U.S.C. § 12189 and its implementing regulations, which provides that entities offering examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations in a manner accessible to persons with disabilities, and in order to make those examinations accessible, shall provide reasonable and necessary accommodations to those persons with disabilities. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

(2) BRIEF STATEMENT OF THE FACTS

The Plaintiff is a student at the Howard University College of Medicine. In order to complete his studies, he must complete and pass the USMLE-Step 1. The Defendant is an organization which administers the USMLE. The USMLE is a three-step licensing examination for medical students and medical school graduates. In many states, passage

of all three steps of the USMLE is a precondition of medical licensing. Howard University College of Medicine requires that students pass the USMLE-Step 1 in order to continue their postsecondary education. The Plaintiff was diagnosed with a Reading Disorder in 2005 and 2009, and was diagnosed with Attention-Deficit/Hyperactivity Disorder-Predominantly Inattentive Type in 2009. He is substantially limited in the major life activities of reading and learning. He requested the necessary accommodation of 100% extended time from the Defendant for the USMLE-Step 1. The accommodation does not change the fundamental nature of the test, as the Defendant has provided it for other examinees. The Defendant refused to provide that accommodation. The Plaintiff appealed that denial, and on reconsideration the Defendant continued to refuse to provide that accommodation. The Plaintiff filed this claim on March 10, 2010, seeking that the Court order the Defendants to provide the accommodation of 100% extended time.

(3) MONETARY DAMAGES CLAIMED

The Plaintiff does not claim monetary damages in this action.

(4) WITNESSES THE PLAINTIFF INTENDS TO CALL AT TRIAL

The Plaintiff intends to call the following witnesses at trial:

- (a) Stephen Cockburn
2544 Ross Road, Apartment 103
Silver Spring, Maryland 20910
- (b) Dr. Vincent Culotta, Ph.D.
NeuroBehavioral Associates
5565 Sterrett Place, Suite 320
Columbia, Maryland 21044

(5) EXHIBITS TO BE OFFERED AT TRIAL BY THE PLAINTIFF

1. First Grade Progress Report for Stephen Cockburn, Wake County Public School System (“WCPSS”) dated 1987-1988
2. Second Grade Progress Report for Stephen Cockburn, WCPSS, dated 1988-1989
3. Third Grade Progress Report for Stephen Cockburn, WCPSS, dated 1989-1990
4. Fourth Grade Progress Report for Stephen Cockburn, WCPSS, dated 1990-1991
5. Fifth Grade Progress Report for Stephen Cockburn, WCPSS, dated 1991-1992
6. Focus of Concern/Screening, WCPSS, dated October 25, 1992-March 25, 1993
7. Sixth Grade Progress Report for Stephen Cockburn, WCPSS, dated October 1992-June 1993
8. Seventh Grade Progress Report for Stephen Cockburn, WCPSS, dated October 1993-June 1994
9. Eighth Grade Progress Report for Stephen Cockburn, WCPSS, dated October 1994-June 1995
10. High School Transcript for Stephen Cockburn, Ravenscroft School, dated June 7, 1999
11. Records of Standardized Test Scores for Stephen Cockburn, Ravenscroft School, 1997-March 1999
12. Psychological Evaluation of Stephen Cockburn, Dr. Dave Filipowski, dated April 7, 1998
13. Official Undergraduate Academic Record for Stephen Cockburn, North Carolina Central University, dated 1999-2003
14. Psychological Evaluation of Stephen Cockburn, Dr. Dave Filipowski, dated June 30, 2005

15. Letter detailing High School Accommodations for Stephen Cockburn from Academic Skills Coordinator Janet D. Smith, Ravenscroft School, dated September 16, 2005
16. E-mail detailing Chemistry Class accommodations for Stephen Cockburn, to Dr. James Fuller from Dr. John A. Myers, North Carolina Central University, dated September 8, 2005
17. Letter detailing College Accommodations for Stephen Cockburn from Student Support Services Director Dr. James B. Fuller, North Carolina Central University, dated December 19, 2005
18. MCAT Score Details for Stephen Cockburn, Association of American Medical Colleges (“AAMC”), dated April 26, 2003
19. MCAT Score Details for Stephen Cockburn, AAMC, dated August 16, 2003
20. MCAT Score Details for Stephen Cockburn, AAMC, dated August 14, 2004
21. MCAT Score Details for Stephen Cockburn, AAMC, dated April 22, 2006
22. Applicant Interview Form completed by Dr. Kerry Lewis, M.D., Howard University College of Medicine, dated November 28, 2006
23. Accommodation Memorandum regarding Stephen Cockburn, from Administrative Assistant Cypriana Bullock, Howard University Office of the Dean for Special Student Services, dated January 13, 2009
24. Certification of Prior Test Accommodations for Stephen Cockburn, by Associate Dean for Academic Affairs Dr. Sheik N. Hassan, Howard University College of Medicine, dated April 16, 2009

25. Letter regarding Medical School Accommodations for Stephen Cockburn, by Office of Curriculum Director Dr. Scott Satterlund, Howard University College of Medicine, dated July 13, 2009
26. Letter denying USMLE-Step 1 Accommodations for Stephen Cockburn, from Disability Services Manager Catherine Farmer, National Board of Medical Examiners (“NBME”), dated August 31, 2009
27. Neuropsychological Evaluation of Stephen Cockburn, Dr. Vincent Culotta, dated October 8, 2009
28. Letter denying USMLE-Step 1 Accommodations for Stephen Cockburn, from Disability Services Manager Catherine Farmer, National Board of Medical Examiners (“NBME”), dated December 9, 2009
29. Letter denying USMLE-Step 1 Accommodations for Stephen Cockburn, from Disability Services Manager Catherine Farmer, National Board of Medical Examiners (“NBME”), dated February 5, 2010
30. Defendant’s Response to Plaintiff’s Interrogatories, dated October 29, 2010
31. Defendant’s Response to Plaintiff’s Request for Admissions, dated October 29, 2010
32. Transcript of the Deposition of Stephen Cockburn, dated December 14, 2009
33. Transcript of the Deposition of Dr. Vincent Culotta, dated December 14, 2009
34. Transcript of the Deposition of Dr. Richard Sparks, dated December 16, 2009
35. Transcript of the Deposition of Dr. Steven Zecker, dated December 16, 2009
36. Transcript of the Deposition of Catherine Farmer, dated February 7, 2011
37. Transcript of the Deposition of Dr. Peter Katsufrakis, dated February 18, 2011

38. Curriculum Vita of Dr. Vincent Culotta

(6) ESTIMATED NUMBER OF DAYS REQUIRED FOR TRIAL

The Plaintiff believes that three days are necessary to complete this trial.

(7) SPECIAL COMMENTS

The Plaintiff acknowledges that there is a pending Motion for Summary Judgment filed by the Defendant. The Plaintiff has filed a Response in Opposition to that Motion, and believes that genuine issues of material fact remain for the trier of fact to determine.

The Plaintiff also requested that the trial begin on a date certain of March 7, 2011. The Court graciously granted that request.

RESPECTFULLY SUBMITTED,

/s/ Wayne D. Steedman
Wayne D. Steedman, Esq.
Federal Bar No. 09474
Callegary & Steedman, P.A.
201 N. Charles St., Suite 1402
Baltimore, MD 21201
(410) 576-7606
wayne@callegarysteedman.com
Attorney for Defendants

/s/ James F. Silver
James F. Silver, Esq.
Federal Bar No. 28571
Callegary & Steedman, P.A.
201 N. Charles Street, Ste. 1402
Baltimore, Maryland 21201
410-576-7606
james@callegarysteedman.com
Attorney for the Plaintiff

/s/ Judith A. Gran
Judith A. Gran, Esq.
Federal Bar No. 40134
Reisman Carolla Gran LLP
19 Chestnut Street
Haddonfield, New Jersey 08033

(856) 354-0061
jgran@reismancarolla.com
Attorney for the Plaintiff

DATED: February 23, 2011

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed electronically and is available for viewing and downloading from the ECF system. Counsel of record for the Defendant were served through the Court's electronic case filing system.

/s/ James F. Silver